

REMARKS/ARGUMENTS

This patent application currently includes claims 1-29, all of which stand rejected. All rejections have been respectfully traversed in the previous amendment. This amendment withdraws amendments that were made under protest in response to an examiner's requirement. It was the applicant's position that the examiner's requirement was improper. That has, in fact, been found in a recent decision by the Board of Patent Appeals and Interferences, so it is believed that the applicant is entitled to make this amendment as a matter of right.

Specifically, in the office action mailed December 13, 2004, the examiner rejected the claims under 35 U.S.C. §101 on the ground that they related to non-statutory subject matter, in that they were method claims and did not present a "technological basis" in the claim. The specific reason was that the claims did not recite that the method was computer implemented. The undersigned objected strenuously to the rejection, pointing out that it was contrary to law and beyond the examiner's authority. Nevertheless, the independent claims were amended to recite "computer implemented."

In a recent decision by the Board of Patent Appeals and Interferences in *Ex parte Carl A. Lundgren* (Appeal No. 2003-2088 in application 08/09 3,516), the Board specifically held that:

Our determination is that there is currently no judicially recognized separate "technological arts" test to determine patent eligible subject matter under §101.

This is precisely the argument made by the undersigned to demonstrate that the examiner's rejection and required amendment were improper. The only purpose of the present

amendment is to reverse that amendment that was made under protest previously. Accordingly, it is believed that the applicant can make this amendment as a matter of right, and it must be entered by the examiner, regardless of this application being under final rejection.

As indicated in the prior amendment, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: November 17, 2005

Respectfully submitted

By

  
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